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THE UNITED STATES PATENT AND TRADEMARK OFFICE

**BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Tracy Glaser

Group Art Unit: 3711

Serial No.: 09/909,737

Examiner: William M. Pierce

Filed: July 19, 2001

Title: CHILD-BASED STORYTELLING ENVIRONMENT

**APPELLANT'S REPLY**

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November 10, 2003

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Commissioner for Patents  
P.O. Box 1450  
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Dear Sir:

This reply is in furtherance of the Notice of Appeal, filed in this case on May 20, 2003.

**INTRODUCTION**

Appellant has previously filed an appeal brief arguing the impropriety of the Examiner's rejection of claims categorized into Groups I-IV, each group comprising individual claims that stand or fall together. The Examiner filed a response, dated October 30, 2003, in which the Examiner conceded that the claims of Group II were not properly rejected. The Examiner then argued that the claims of Groups I, III, and IV were properly rejected. This is appellant's reply, made pursuant to 37 CFR § 1.193.

## ARGUMENT

### A. Group I

Group 1 comprises claims directed to a computer based game for children having at least one scenario. Each claim in this group contains the limitations of (1) said game obtaining the age for a first particular one of said children as a result of interaction with said game; (2) said game obtaining the age for a second particular one of said children as a result of interaction with said game; and (3) said game modifying said scenario for said first and second child based on said respective ages.

The Examiner rejected the claims of Group I under 35 U.S.C. § 102(b). The Examiner maintains that Sloane, et al., U.S. Patent No. 5,813,863 (hereinafter Sloane) discloses each of the previously cited limitations. In order for the Examiner's rejection of the claims of Group 1 under 35 U.S.C. § 102(b) to be deemed proper, Sloane would have to disclose a game that *interactively* obtains the ages of *two* children and then modifies *a* scenario based upon the *two ages* obtained interactively. It plainly does not do so, for two reasons.

First, Sloane does not anticipate the claim limitation that a user's age be obtained "as a result of interaction" with a game. Under 35 U.S.C. § 102(b), a claim limitation is not anticipated unless it is *specifically* or *inherently* disclosed in the prior art. *See MPEP § 2131.01; see also Verdigaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)(“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”). To argue his rejection, the Examiner first points to a specific listing of the types of personal information Sloane specifically contemplates as appropriate for *background research* of the target audience, which includes a user's age. The examiner then imputes the entire list into Sloane's disclosure of the types of personal information Sloan contemplates as being prompted interactively from a user, even though Sloane only *specifically* discloses race and gender among this latter type of personal information. This imputation may not form the basis of a proper rejection under 35 U.S.C. § 102(b). Further, because the age of prospective users has been previously researched, and the content of the system of Sloane tailored to the researched age group, there would be no reason for the system to interactively prompt a user's age.

Second, Sloane does not disclose obtaining the ages of a first child *and* a second

child, then modifying *a scenario for said first and second child* based upon said *respective ages*. The Examiner points to portions of Sloane that indicate that the system of Sloane is suitable for use by a number of people, either successively on a single kiosk or simultaneously over a network. These portions of Sloane, however, merely indicate that many users may be presented with their own interactive scenarios, where the scenario associated with each user may be tailored to the particular combination of race and gender for that user. Thus, *even if* Sloane were to be read as disclosing that a user may be interactively prompted for the user's age, and the scenario being presented to the user modified based on that age, Sloane still does not disclose modifying *a scenario* based upon the *respective ages* interactively obtained from *two* users. The applicant further notes that the system of Sloane is intended to present a scenario to a user from a first person perspective. Thus the contention that Sloane discloses modifying a scenario based on the respective ages of *two* users makes little sense.

#### **B. Group II.**

The Examiner has conceded that the grounds for his rejection of the claims of Group II can not be sustained.

#### **C. Group III.**

The claims of Group III each contain the limitations of (1) a game creating a psychological profile for a particular child and (2) the psychological profile being based on the child's configuring a graphical representation of the child. Neither of these limitations is disclosed by Sloane.

With respect to the first recited limitation, the Examiner contends that Sloane discloses the creation of a psychological profile of a user, positing that Sloane's inclusion of physical characteristics of the user, such as age and race, are encompassed within the specification's description of a psychological profile. In fact, the specification indicates the opposite. Referring to pages 7-11 of the applicant's patent application, the specification indicates that a game may interactively obtain physical information about a child with which to create a graphical representation, or avatar, of a child user. Examples of *physical information* that may be obtained include age and gender. After the graphical representation of the user is created, a

psychological profile of the child is obtained and attributed to that graphical representation. See specification page 12. Examples of information that may be used to generate the psychological profile include specified ability assessments (page 12) and results of personality tests such as the Luscher Color test (page 13). Though the specification indicates that certain age-related psychological concerns, such as “afraid of the dark” or “nightmares” (page 13) may be attributed to the graphical representation of the child,<sup>1</sup> at no point does the specification indicate that a child’s age or other purely physical characteristics such as race or gender *themselves* comprise a psychological profile, either individually or collectively. Instead, the specification refers to factors such as age, race and gender merely as physical attributes of the child.

With respect to the second limitation, Sloane does not even disclose the *use* of a graphical representation of a child let alone the generation of a psychological profile based on a child configuring that representation. The Examiner appears to concede that Sloane requires the use of a first-person perspective in its interactive video presentation, and thus excludes the possibility of a physical representation of the user within Sloane’s video clips. Instead, the Examiner asserts that, in view of the specification, the term “graphical representation” must be read so broadly as to include any “digital representation of a child” which then would somehow read on Sloane’s disclosed “digital video” and “virtual character.”

This reasoning is flawed because Sloane’s “virtual character” is never graphically represented in the “digital video.” The applicant also points to pages 7 and 9-10 of the specification, which describes the claimed graphical representation in terms of a “form upon which to attribute the child’s personality”(page 7), or a “graphical icon . . . as a representation of the actual child” (page 9), that may have a “default body” (page 9) and that preferably may be configured by the child in size, proportion, skin tone, hair style and color, and/or facial expressions (page 9). The specification further states that preferably a child may import an actual image of himself (page 10) and that, in some embodiments, the representation of the child in the game may be in the form of a “turtle”, a “frog” (page 10) or some other form. Thus, while the

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<sup>1</sup>If the Examiner is suggesting that Sloane discloses that a user’s age, gender, or race may be interactively obtained and then used to attribute certain psychological attributes to the virtual character, this is incorrect. Sloane merely discloses using such information to modify the voice of the virtual character and the social surroundings depicted in the video clips.

specification permits great latitude in the particular form of the “graphical representation” of the child, the specification makes clear that the claimed “graphical representation” is some digital icon or other object *in the video* that the child identifies as himself or herself (page 9). Thus Sloane’s first-person perspective video does not include a “graphical representation” of a child.

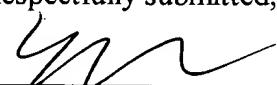
#### D. Group IV.

The Examiner asserts that Sloane’s disclosure of an interactive behavior modification system in which the collective choices of individual users are tracked over a period of time to make subsequent improvements to the behavior modification system anticipates the claimed limitations of “creating a set of data based on interaction of *said* child with said game,” “forwarding said data to at least one of a . . . video company . . .” and a respective one of said companies in turn providing to *said* child at least one of a . . . video . . .” The flaw in this reasoning is that, while Sloane’s compiled statistical data system may be based on interaction with a user, and used to create updated video, Sloane merely discloses providing the updated video clips back to the interactive system.<sup>2</sup> Sloane does not disclose providing those video clips *back to any individual user*, i.e. “*said* child.”, Thus Sloane does not anticipate the claims of Group IV.

### CONCLUSION

For the foregoing reasons, the Examiner’s final rejection of the claims of Groups I-IV under 35 U.S.C. Section 102(b) should be reversed and these claims found patentable to applicant.

Respectfully submitted,



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<sup>2</sup>Parenthetically, a user whose choices were included in the statistical data used to update the video of Sloane’s system might, through random chance, use the updated system again. This, however, is merely hypothetical conjecture and is certainly not disclosed by Sloane as a *feature* of the behavior modification system.

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Dated: November 10, 2003

  
\_\_\_\_\_  
Kevin L. Russell



Form PTO/SB/21 (6-98) (Modified)

# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		<b>Application Number</b>	09/909,737
		<b>Filing Date</b>	July 19, 2001
		<b>First Named Inventor</b>	Tracy Glaser
		<b>Group Art Unit</b>	3711
		<b>Examiner Name</b>	William M. Pierce
Total Number of Pages in this Submission	7	Attorney Docket Number	KLR:7965.0001

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Firm or Individual Name	Kevin L. Russell Chernoff, Vilhauer, McClung & Stenzel, LLP 601 SW Second Avenue Portland, Oregon 97204-3157
Signature	
Date	November 10, 2003

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